

## SELECTIVE AGRICULTURAL EMBARGOES ACT OF 1999

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MAY 20, 1999.—Ordered to be printed

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Mr. COMBEST, from the Committee on Agriculture,  
submitted the following

### REPORT

[To accompany H.R. 17]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 17) to amend the Agricultural Trade Act of 1978 to require the President to report to Congress on any selective embargo on agricultural commodities, to provide a termination date for the embargo, to provide greater assurances for contract sanctity, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### BRIEF EXPLANATION

H.R. 17, the Selective Agricultural Embargoes Act of 1999, requires the President to report to Congress on any selective embargo on agricultural commodities and specifies the period during which the embargo will be in effect.

#### PURPOSE AND NEED

For American farmers and ranchers, trade is an essential part of their livelihood. Exports account for 30% of U.S. farm cash receipts and nearly 40% of all agricultural production is exported. U.S. farmers and ranchers produce much more than is consumed in the United States, therefore exports are vital to the prosperity and success of U.S. farmers and ranchers. The future holds great promise for agriculture exports as world income and economic growth expand. Higher incomes for consumers mean improved and diverse diets, which, in turn, result in a greater demand for high value agricultural products.

In order to continue to meet the worldwide demand for U.S. agricultural products, farmers and ranchers must continually assess

the world market to determine where those markets are for specific agricultural products. It has become increasingly difficult to make this assessment because farmers and ranchers are denied access to certain world markets due to economic sanctions and embargoes, among other reasons.

A June 1997, report entitled "Unilateral Economic Sanctions", prepared by the President's Export Council, details what is described as a complex and growing web of restrictions and legal impediments in the international trading system that extends well beyond the intent of the individual measures. The Export Council's report describes more than 75 countries, from Angola to Zaire, that are subject to, or under the threat of, one or more of some 21 specific sanctions. The report estimates the impact of all sanctions, including foregone sales and business relationships, at \$15 billion to \$19 billion, which corresponds to 200,000 to 250,000 export-related jobs in 1995.

For U.S. agriculture, embargoes or sanctions, whether imposed by the Administration or by law, often have unintended consequences that can fall unfairly on U.S. farmers and ranchers. U.S. agriculture remembers the 1980 Soviet grain embargo. The one lasting impression left of that embargo is that the U.S. could not be considered to be a reliable supplier of wheat. The past 19 years have been spent attempting to reverse that opinion.

Iran and Iraq used to be \$5.5 billion markets for agriculture products, with the U.S. as a major supplier. Currently, no U.S. agriculture exports go to Iran and in 1997, exports to Iraq were \$50 million—2% of that country's agriculture imports.

Therefore because of the importance of assuring the reliability of the U.S. as a supplier of food and agricultural products, the Committee determined legislation was needed to address the effects of embargoes and sanctions on U.S. agriculture.

#### *Selective embargoes*

This bill amends the Agricultural Trade Act of 1978 to require that, if the President acts to implement an embargo of any agricultural commodity to any country, the President must submit a report to Congress, within 5 days of imposing the embargo, that describes the reasons for the embargo and the period of time the embargo will be in effect. This requirement is applicable when there is an embargo of agriculture commodities to a country and that embargo does not include all exports to that country.

H.R. 17 also provides that if within 100 days of receiving the President's report, a joint resolution is enacted that approves the embargo, the embargo will end on the date determined by the President or 1 year after the date of enactment of the joint resolution, whichever is earlier. If a joint resolution disapproving the embargo is enacted during that 100-day period, the embargo will terminate at the end of that 100-day period.

The bill includes an exception providing that an embargo may take effect during any period in which there is a state of war declared by Congress or a national emergency declared by the President.

*Contract sanctity*

The bill also clarifies that “plant nutrient materials” are to be included in the category of agricultural commodities in the section of the Agricultural Trade Act of 1978, regarding contract sanctity. Therefore the protection afforded agricultural commodities in regard to suspension of trade and contract sanctity will be applied to plant nutrient materials.

Plant nutrient materials under export sales contracts will be protected from suspension of trade, as long as the contract is entered into before the suspension of trade is announced and the contract terms require delivery within 270 days after suspension of trade is imposed.

## SECTION-BY-SECTION

*Sec. 1. Short title*

This Act may be cited as the “Selective Agricultural Embargoes Act of 1999.”

*Sec. 2. Reporting on selective embargoes*

This section amends the Agricultural Trade Act of 1978 by adding a new section at the end of title VI. It contains the following provisions:

(a) REPORT.—The President is required to report to Congress within 5 days of taking any action to embargo the export of any agricultural commodity which is under an export sales contract, if such embargo is not part of an embargo of all exports to that country.

(b) APPROVAL OF EMBARGO.—If within 100 days of receiving the President’s report a Joint Resolution approving the embargo is enacted into law, the embargo shall terminate on the earlier of a date chosen by the President, or one year after enactment of the Joint Resolution.

(c) DISAPPROVAL OF EMBARGO.—If, on the other hand, within 100 days of receiving the President’s report a Joint Resolution disapproving the embargo is enacted into law, the embargo shall terminate automatically at the end of that 100 day period.

(d) EXCEPTION.—This section contains the exception that an embargo may take effect during any period in which the United States is in a state of war declared by Congress or during a national emergency as declared by the President.

(e) DEFINITIONS.—This section clarifies that the term “agricultural commodity” includes plant nutrient materials. It defines “under an export sales contract” to mean any export sales contract entered into prior to the time the President transmits notice of the proposed embargo to the Congress, and “embargo” to mean “any prohibition or curtailment.”

*Sec. 3. Addition of plant nutrient materials to protection of contract sanctity*

Generally, section 602(c) of the Agricultural Trade Act of 1978 prevents the President from nullifying export sales contracts which are entered into prior to the time the President takes any action which would prohibit or curtail the export of an agricultural com-

modity. This section amends section 602(c) to clarify that plant nutrient materials are included within the definition of “agricultural commodity” for purposes of receiving this same protection.

#### COMMITTEE CONSIDERATION

The Committee on Agriculture met, pursuant to notice and with a quorum present, on February 10, 1999, to consider H.R. 17 and other pending business. Chairman Combest recognized Mr. Ewing, Chairman of the Subcommittee on Risk Management, Research, and Specialty Crops, who is also the author of the bill for an explanation.

Mr. Ewing provided a brief explanation of the bill and asked unanimous consent that a letter in support of H.R. 17 signed by over 30 agricultural associations and businesses representing a broad sector of the U.S. agricultural community, be inserted into the record (see Appendix II). Without objection, it was ordered.

Mr. Stenholm was then recognized and expressed his support for the bill.

After a brief discussion on the bill, Mr. Stenholm moved that the bill, H.R. 17, be adopted and favorably reported to the House with a recommendation that it do pass. Mr. Stenholm’s motion was agreed to by a voice vote of the Committee with a majority quorum being present.

#### REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, H.R. 17 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

#### BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 19, 1999.*

Hon. LARRY COMBEST,  
*Chairman, Committee on Agriculture,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 17, the Selective Agricultural Embargoes Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Craig Jagger.

Sincerely,

DAN L. CRIPPEN, *Director*.

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

##### *H.R. 17—Selective Agricultural Embargoes Act of 1999*

H.R. 17 would establish procedures for the Congress to approve or disapprove agricultural embargoes imposed by the President that are in part of an embargo on all exports to a particular country or countries. The President would be required to report such embargoes to the Congress. Except in cases of war or national emergency, H.R. 17 would require that an embargo be terminated within a year after the Congress approves it or within 100 days of the report if the Congress disapproves it. The bill also would apply certain contract sanctity requirements that are already in effect for agricultural commodities to plant nutrient materials.

If new embargoes are imposed, the bill could affect direct spending because embargoes might end and programs to guarantee export loans might resume earlier than under current law. However, CBO has no basis for estimating the potential budgetary impact of these provisions because we cannot predict the likelihood or extent of future embargoes.

Because the bill could affect direct spending, pay-as-you-go procedures would apply. H.R. 17 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO contact for this estimate is Crag Jagger. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Government of the United States or in any department or officer thereof.

#### OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform, as provided for in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives,

was available to the Committee with reference to the subject matter specifically addressed by H.R. 17.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

#### ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

#### FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### TITLE VI OF THE AGRICULTURAL TRADE ACT OF 1978

## TITLE VI—REPORTS

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#### SEC. 602. EXPORT REPORTING AND CONTRACT SANCTITY.

(a) \* \* \*

\* \* \* \* \*

(c) CONTRACT SANCTITY.—Notwithstanding any other provision of law, the President shall not prohibit or curtail the export of any agricultural commodity (*including plant nutrient materials*) under an export sales contract—

(1) that is entered into before the President announces an action that would otherwise prohibit or curtail the export of the commodity, and

(2) the terms of which require delivery of the commodity within 270 days after the date of the suspension of trade is imposed,

except that the President may prohibit or curtail the export of any agricultural commodity (*including plant nutrient materials*) during

a period for which the President has declared a national emergency or for which the Congress has declared war.

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**SEC. 604. REPORTING ON SELECTIVE EMBARGOES.**

(a) *REPORT.*—If the President takes any action, pursuant to statutory authority, to embargo the export under an export sales contract (as defined in subsection (e)) of an agricultural commodity to a country that is not part of an embargo on all exports to the country, not later than 5 days after imposing the embargo, the President shall submit a report to Congress that sets forth in detail the reasons for the embargo and specifies the proposed period during which the embargo will be effective.

(b) *APPROVAL OF EMBARGO.*—If a joint resolution approving the embargo becomes law during the 100-day period beginning on the date of receipt of the report provided for in subsection (a), the embargo shall terminate on the earlier of—

(1) a date determined by the President; or

(2) the date that is 1 year after the date of enactment of the joint resolution approving the embargo.

(c) *DISAPPROVAL OF EMBARGO.*—If a joint resolution disapproving the embargo becomes law during the 100-day period referred to in subsection (b), the embargo shall terminate on the expiration of the 100-day period.

(d) *EXCEPTION.*—Notwithstanding any other provision of this section, an embargo may take effect and continue in effect during any period in which the United States is in a state of war declared by Congress or national emergency, requiring such action, declared by the President.

(e) *DEFINITIONS.*—As used in this section—

(1) the term “agricultural commodity” includes plant nutrient materials;

(2) the term “under an export sales contract” means under an export sales contract entered into before the President has transmitted to Congress notice of the proposed embargo; and

(3) the term “embargo” includes any prohibition or curtailment.





## APPENDIX I

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CONGRESSIONAL RESEARCH SERVICE,  
LIBRARY OF CONGRESS,  
*Washington, DC, February 17, 1999.*

### MEMORANDUM

To: House Committee on Agriculture, Attention: Andy Baker.  
From: Jeanne J. Grimmett, Legislative Attorney, American Law  
Division.  
Subject: Possible Effect of H.R. 17, 106th Cong., 1st Sess. (1999),  
Had Its Provisions Been in Force as of January 1, 1979.

This memorandum responds to your request for an identification of Presidential actions to which the proposed Selective Agricultural Embargoes Act of 1999, H.R. 17, 106th Cong., 1st Sess. (1999), as ordered reported, would have applied if its provisions had been in effect as of January 1, 1979. Listed below are examples of trade embargoes that would seemingly have fallen within the scope of the bill. This memorandum addresses only the potential application of the bill's provisions to the embargoes listed and does not address whether and, if so, the extent to which, any of the listed embargoes affected actual export sales contracts, as defined by the bill.

H.R. 17, the Selective Agricultural Embargoes Act of 1999, would add a new section to the Agricultural Trade Act of 1978, 7 U.S.C. §§5711 et seq., requiring the President to report to Congress if he "takes any action, pursuant to statutory authority, to embargo the export under an export sales contract \* \* \* of an agricultural commodity to a country that is not part of an embargo on all exports to the country." The President must so report within 5 days of imposing the embargo.<sup>1</sup> The phrase "under an export sales contract" is defined as "under an export sales contract entered into before the President has transmitted to Congress notice of the proposed embargo."<sup>2</sup> The term "embargo" is defined to include "any prohibition or curtailment"<sup>3</sup> and we assume for purposes of this memorandum that this definition applies to the term whether it is used as a noun or a verb. The term "agricultural commodity" expressly encompasses "plant nutrient materials."<sup>4</sup> The bill also provides for the legislative approval and disapproval of such an embargo, providing a date on which the embargo will terminate depending on the nature of the congressional response.<sup>5</sup> The bill additionally states that, notwithstanding any other provision of the new

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<sup>1</sup> H.R. 17, §2, adding Agricultural Trade Act of 1978, §604(a).

<sup>2</sup> H.R. 17, §2, adding Agricultural Trade Act of 1978, §604(e)(2).

<sup>3</sup> H.R. 17, §2, adding Agricultural Trade Act of 1978, §604(e)(1), (3).

<sup>4</sup> H.R. 17, §2, adding Agricultural Trade Act of 1978, §604(e)(2).

<sup>5</sup> H.R. 17, §2, adding Agricultural Trade Act of 1978, §604(b)-(c).

section, “an embargo may take effect and continue in effect during any period in which the United States is in a state of war declared by the Congress or national emergency, requiring such action, declared by the President.”<sup>6</sup> We are assuming that the bill contemplates that any export restrictions or prohibitions that the President imposes under statutory authority may take effect on the date that the President announces them or on another date that he prescribes.

Given the above-described language, the reporting, approval and disapproval provisions of the bill would seemingly apply to any action by the President that: (1) does not involve a prohibition or curtailment of the export of all goods to a given country, and (2) prohibits or curtails exports of agricultural commodities under export sales contracts entered into before the President has submitted the required notice to Congress. For purposes of the examples given below, we are assuming that the President would not have made his communication to Congress until up to 5 days after taking action to impose the embargo.

The breadth of meaning of the term “embargo”—namely, “any prohibition or curtailment”—may also possibly cover presidentially mandated prohibitions or restrictions on loans, credits, and credit guarantees for agricultural exports, whether granted by the federal government or private institutions. While such prohibitions would not directly “prohibit or curtail” agricultural exports, they indirectly may have this effect. Moreover, a prospective loan or credit restriction may have a retroactive effect, as the inability to obtain financing could in some cases make it less likely that the actual export of goods will take place under an export sales contract entered into before the effective date of the presidential action involved. A number of questions may be raised, however, by the inclusion of export financing within the scope of the bill. For example, would a prohibition on export financing of all goods destined for a given country be considered “an embargo on all exports” if there is no accompanying prohibition on the actual export of goods to that country? Alternatively, if there is a prohibition on the export of goods to a country, would the bill apply if the export prohibition is selective but the financing provision is comprehensive? If the bill is to be read in a broad manner, it would seemingly have applied, for example, to the mandatory application by the President of prospective nuclear sanctions against India and Pakistan under § 102(b) of the Arms Export Control Act, 22 U.S.C. § 2799aa-1(b), following the detonation of nuclear devices by each of these countries in May 1998. The President was required to impose a ban on certain exports to India and Pakistan as well as to prohibit government financing of exports of all commodities, with the exception of certain intelligence-related transactions and humanitarian assistance. Because the United States did not ban all exports to India and Pakistan, any “curtailment” of agricultural exports under existing sales contracts resulting from prospective financing prohibitions would not have been part of an embargo of all goods to these countries.

It should be noted that in the 1980’s, Congress placed restrictions on the authority of the Executive Branch to impose export

<sup>6</sup>H.R. 17, § 2, adding Agricultural Trade Act of 1978, § 604(d).

controls on agricultural products and provided protections for domestic parties who were affected by embargoes. In 1981, Congress required that the farmers be compensated for the effects of an agricultural embargo under certain conditions.<sup>7</sup> In addition, a contract sanctity provision, enacted in the Futures Trading Act of 1982 and currently codified at 7 U.S.C. §5712(c), prohibits the President from prohibiting or curtailing the export of any agricultural commodity under an export sales contract (1) that is entered into before the President announces an action that would otherwise prohibit or curtail the export of the commodity, and (2) the terms of which require delivery of the commodity within 270 days after the date the suspension of trade is imposed, except that the President may so restrict the export of any agricultural commodity during a period for which he has declared a national emergency or for which Congress has declared war. In addition, the Export Administration Act of 1979, which delegated to the President the authority to control exports for reasons of national security, foreign policy, and short supply, was amended in 1985 to prohibit the use of the Act's national security authorities to impose export controls on "agricultural commodities, including fats, oils, and animal hides and skins."<sup>8</sup> Congress also added a contract sanctity requirement to the Act's foreign policy control provision and placed other restrictions on the use of EAA authorities to place export controls on agricultural commodities for foreign policy reasons.<sup>9</sup> The EAA expired in 1994 and its authorities are currently carried forward pursuant to the International Emergency Economic Powers Act, discussed below.

Most of the export restrictions described below have been imposed by the President under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§1701 et seq., which delegates to the President broad authority to prohibit and regulate exports and other economic transactions having a foreign component, conditioned on the President's first declaring a national emergency. The Act prohibits the President from using IEEPA authority to regulate or prohibit donations of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that he determines that: (1) such donations would seriously impair his ability to deal with the underlying national emergency; (2) the donations are in response to coercion against the proposed recipient or donor; or (3) the donations would endanger U.S. Armed Forces engaged in (or about to be engaged in) hostilities.<sup>10</sup> Because the President has discretion under this provision to prohibit the donations described, we will treat any exclusion of such

<sup>7</sup> Agricultural and Food Act of 1981, Pub. L. No. 97-98, §1204, 7 U.S.C. §1736j, currently codified at 7 U.S.C. §5672.

<sup>8</sup> Export Administration Amendments Act of 1985 (EAAA), Pub. L. No. 99-64, §105(j), adding Export Administration Act of 1979 (EAA), §5(q), 50 U.S.C. App. §2404(q).

<sup>9</sup> EAAA, §108, adding or amending EAA, §§6(g), (m), 50 U.S.C. App. §§2405(g), (m); EAAA, §109(d), amending EAA, §7(g)(3), 50 U.S.C. App. §§2406(g)(3). Section 6(m) of the EAA, providing for contract sanctity, was eventually redesignated §6(p) and codified at 50 U.S.C. App. §2405(p).

<sup>10</sup> International Emergency Economic Powers Act (IEEPA), §203(b)(2), 50 U.S.C. §1702 (b)(2). Section 203(b) also prohibits the use of IEEPA authorities to regulate or prohibit personal communications that do not involve a transfer of anything of value, the importation or exportation of certain informational materials, and transactions ordinarily incident to travel. IEEPA, §203(b), 50 U.S.C. §1702(b).

donations as a situation that does not involve “an embargo on all exports” to a given country.

Listed below are embargoes to which H.R. 17 seemingly would have applied if it had been in effect as of January 1, 1979. Each of these embargoes appears to contain each of the three elements required by the statute: (1) inclusion of agricultural commodities; (2) selectivity (certain exports excluded from a broad prohibition or otherwise not initially covered); and (3) some degree of retroactivity (e.g., exporters may have entered into export sales contracts but may not have obtained export licenses by 5 days after the date the embargo was announced, or existing contracts may be performed but only until a given date).

*Soviet grain embargo (1980).*—In response to the Soviet Union’s invasion of Afghanistan in late December 1979, President Carter, on January 7, 1980, invoked his authority under the Export Administration Act of 1979 to control exports for reasons of national security and foreign policy to direct the Secretary of Commerce to terminate all grain shipments to the Soviet Union in excess of the 8 million tons per year that the United States was committed to sell under its 5-year grain agreement with the U.S.S.R., and to terminate the export of other agricultural commodities as well.<sup>11</sup>

*Nicaragua embargo (1985).*—In response to activities of the Nicaraguan Government, President Reagan on May 1, 1985, invoked his authorities under the IEEPA to impose a trade embargo on Nicaragua effective May 7, 1985.<sup>12</sup> The embargo included a prohibition on “all exports from the United States of goods to or destined for Nicaragua, except those destined for the organized democratic resistance.” Regulations issued by the Office of Foreign Assets Control (OFAC) provided that there would be a prohibition on all exports from the United States to Nicaragua, except for exports destined for the organized democratic resistance; donated articles such as food, clothing and medicine intended to be used to relieve human suffering; commercial exports of medicines and supplies intended strictly for medical purposes; exports of goods for humanitarian, educational, or religious purposes (to be considered on a case-by-case basis) and certain other items under enumerated general license provisions of the Commerce Department.<sup>13</sup>

OFAC regulations allowed the export of goods in transit before the effective date of the embargo and stated that specific licenses would normally be granted for the export of goods from the United States after the effective date and before November 1, 1985, provided the exporter demonstrated that it had a legal obligation to export the goods to Nicaragua under a contract entered into prior to May 1, 1985, and either that (1) the exporter’s obligation was guaranteed under an outstanding performance bond which could be

<sup>11</sup> 16 Weekly Comp. Pres. Docs 32 (1980); 45 Fed. Reg. 1883 (1980); 45 Fed. Reg. 8289 (1980). On January 16, 1980, the Commerce Department, at the direction of the President, suspended all outstanding export licenses and other specific authorizations issued to date for shipments to the Soviet Union, pending a U.S. licensing policy “in light of the Soviet intervention in Afghanistan and changed national security circumstances.” 45 Fed. Reg. 3027–28 (1980). The Department also provided notice that, except for licenses for certain agricultural commodities and products that could be exported pursuant to the President’s earlier order and licensing requirements issued pursuant to that order (see 45 Fed. Reg. 1883), no new licenses or other authorizations for export to the U.S.S.R. would be issued by the Department pending the announced review. 45 Fed. Reg. at 3027–28.

<sup>12</sup> Executive Order 12513, 21 Weekly Comp. Pres. Docs. 566–67 (1985).

<sup>13</sup> 50 Fed. Reg. 19890 (1985).

successfully invoked by the Nicaraguan importer, or (2) the exporter was unable to sell the goods to any other purchaser without incurring a loss.<sup>14</sup> Because the embargo seemingly would have covered any agricultural goods subject to an export sales contract entered into between the date of the President's order and 5 days thereafter and, moreover, because agricultural goods to be exported pursuant to an export sales contract entered into before the end of that 5-day period could not be provided after November 1, 1985, the bill would appear to have potential applicability to this action of the President.

*Libya embargo (1986).*—In response to various policies and actions of Libya, President Reagan invoked his IEEPA powers on January 7, 1986, to impose a trade embargo on Libya, including a general prohibition on the exports to that country of goods, technology (including technical data or other information), and services effective February 1, 1986.<sup>15</sup> The President also placed a ban on the grant or extension of credits by any U.S. person to the Libyan Government, effective January 7, 1986.<sup>16</sup> Except as authorized by OFAC, no goods, technology (including technical data or other information), or services could be exported to Libya, except publications and donated articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes.<sup>17</sup> The ban did not apply to goods laden on vessels or airlines before the effective date, to goods that had left the United States by other means before the effective date, or to payments relating to such goods even when the payments occurred after the effective date.<sup>18</sup>

*Iraq embargo (1990).*—In response to Iraq's invasion of Kuwait in August 1990, President Bush invoked his IEEPA authorities to prohibit the exportation to Iraq of any goods from the United States, except publications and other informational materials, and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes.<sup>19</sup> The order, dated August 2, 1990, was effective immediately.<sup>20</sup> A week later, the President issued a second order in which he prohibited the exportation to Iraq of any goods, including technical data or other information, either (1) from the United States, or (2) requiring the issuance of a license by a Federal agency, or any activity that promotes or is intended to promote such exportation, except donations of articles intended to relieve human suffering, such as food and supplies intended strictly for medical purposes.<sup>21</sup> This order, dated August 9, 1990, was also effective immediately.<sup>22</sup> There were no contract sanctity provisions in these orders. Regulations provided that, except as otherwise authorized, no goods, technology (including technical data or other information) could be exported to Iraq, except "donated foodstuffs in humanitarian circumstances, and donated supplies intended strictly for

<sup>14</sup> 31 C.F.R. § 540.505 (1985), 50 Fed. Reg. at 19892.

<sup>15</sup> Executive Order 12543, §§ 1(b), 3, 51 Fed. Reg. 875 (1986).

<sup>16</sup> Executive Order 12543, §§ 1(f), 3, 51 Fed. Reg. at 875.

<sup>17</sup> 31 C.F.R. § 550.202, 51 Fed. Reg. 1354, 1355 (1986).

<sup>18</sup> 31 C.F.R. § 550.404, 51 Fed. Reg. 1355 (1986).

<sup>19</sup> Executive Order 12722 of August 2, 1990, § 2(b), 55 Fed. Reg. 31803 (1990).

<sup>20</sup> Executive Order 12722, § 3, 55 Fed. Reg. at 31804.

<sup>21</sup> Executive Order 12724 of August 9, 1990, § 2(b), 55 Fed. Reg. 33089 (1990).

<sup>22</sup> Executive Order 12724, § 4, 55 Fed. Reg. at 33090.

medical purposes,” provided their exportation was specifically licensed under named OFAC regulations.<sup>23</sup> Goods awaiting exportation to Iraq on the effective date of the President’s order that were seized or detained by the U.S. Customs Service on or following that date could be released to the exporter under certain conditions.<sup>24</sup>

*Haiti embargo (1991/1993).*—In response to activities involving the de facto regime in Haiti, President Bush on October 28, 1991, cited his authorities under IEEPA and other provisions of law to prohibit exports from the United States to that country, effective November 5, 1991, except for: (1) information materials; (2) donations of articles intended to relieve human suffering; and (3) rice, beans, sugar, wheat flour, and cooking oil.<sup>25</sup> The Haitian Transactions Regulations issued by the Office of Foreign Assets Control in March 1992 to administer the embargo provided also for the case-by-case authorization of commercial exports of medicines and medical supplies to Haiti under certain conditions,<sup>26</sup> case-by-case licensing of certain exportations from the United States to Haiti by certain U.S. persons engaged in the assembly or processing in Haiti of articles for export to the United States which contained parts or materials exported from the United States,<sup>27</sup> and certain other exports. Neither the President’s order, nor the regulations appeared to contain a contract sanctity provision. Given that the embargo was selective, that exports of certain agricultural products were covered, and that exports of such items under existing sales contracts could seemingly have been affected, the bill’s provisions would apparently have applied.

United States trade and financial sanctions against Haiti were suspended by OFAC in September 1993<sup>28</sup> and reimposed in October of that year.<sup>29</sup> The President’s direction to OFAC to reimpose the export embargo in October 1993 may seemingly be considered a new action covered by the bill.<sup>30</sup>

<sup>23</sup> 31 C.F.R. § 575.205, 56 Fed. Reg. 2112, 2114–15 (1991). See also 31 C.F.R. § 575.520 and 575.521, 56 Fed. Reg. at 2121, regarding licensing policy for donations of food and medical supplies, respectively.

<sup>24</sup> 31 C.F.R. § 575.517, 56 Fed. Reg. at 2120.

<sup>25</sup> Executive Order 12779 of October 28, 1991, § 2(c), 56 Fed. Reg. 12779 (1991).

<sup>26</sup> 31 C.F.R. § 580.510, 57 Fed. Reg. 10820, 10828 (1992). The Haitian Transaction Regulations were amended in September 1992 to expand the general authorization for the export of certain food products to include corn and corn flour, milk (including powdered milk), and edible tallow (that is, hardened shortening, including lard). 57 Fed. Reg. 39603 (1992), adding 31 C.F.R. § 580.516.

<sup>27</sup> 31 C.F.R. § 580.515, 57 Fed. Reg. at 10829.

<sup>28</sup> 58 Fed. Reg. 46540 (1993).

<sup>29</sup> 58 Fed. Reg. 54024 (1993).

<sup>30</sup> “Clinton Acts to Block Trade with Haiti; U.S. Backs U.S. with Unilateral Sanctions,” 10 Int’l Trade Rep. 1756 (BNA 1993). In May 1994, President Clinton issued an executive order under IEEPA and other statutes that amended the export prohibitions imposed under the President’s 1991 order to prohibit, effective May 21, 1994, the export by United States persons or from the United States of any goods, regardless of origin, to Haiti, or any activity by United States persons or in the United States that promoted the export of such goods, except for: (1) information materials, or (2) medicines and medical supplies, as authorized by the Secretary of the Treasury, and rice, beans, sugar, wheat flour, cooking oil, corn, corn flour, milk, and edible tallow, provided that neither the de facto regime in Haiti nor any person designated by the Treasury Secretary as a blocked individual or entity of Haiti was a direct or indirect party to the transaction. Executive Order 12917 of May 21, 1994, § 1(d), 59 Fed. Reg. 26925 (1994) (emphasis added); see also Executive Order 12920 of June 10, 1994, 59 Fed. Reg. 30501 (1994). The 1994 order also contained language that made the prohibition applicable “notwithstanding the existence of any rights or obligations conferred or imposed by . . . any contract entered into or license or permit granted before the effective date” of the President’s order. Executive Order 12917, § 1, 59 Fed. Reg. at 26925. While this expansion of the embargo contained language regarding existing contract rights and may theoretically have covered export sales contracts involving agricultural

*Iran export embargo (1995).*—On May 7, 1995, President Clinton invoked his IEEPA authority and other statutory provisions to expand existing economic restrictions on Iran to include a prohibition on the exportation from the United States to Iran, or the financing of any such exportation, of any goods, technology, or services, “except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)).”<sup>31</sup> The prohibition applied “notwithstanding any contract entered into or any license or permit granted prior to the effective date of the order.”<sup>32</sup> The export prohibition applied as of June 6, 1995, to trade transactions under contracts in force as of the date of the order if the transactions were authorized pursuant to federal regulations in force immediately prior to the date of the order.<sup>33</sup> Letters of credit and other financing agreements with respect to the contracts just described could be performed pursuant to their terms with respect to the underlying trade transactions occurring prior to June 6, 1995.<sup>34</sup> Regulations provided that “[e]xcept as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology or services is prohibited,” but made an exception for, *inter alia*, humanitarian donations and information and informational materials.<sup>35</sup> The regulations also authorized: (1) all transactions by U.S. persons in connection with the exportation from the United States to Iran of any agricultural commodity under an export sales contract, provided the contract was entered into prior to May 7, 1995, and the terms of the contract required delivery prior to February 6, 1996, and (2) the performance of letters of credit and other financing agreements pursuant to their terms with respect to agricultural exports authorized by OFAC.<sup>36</sup> The term agricultural commodity was defined as “feed grains, rice, wheat, cotton, peanuts, tobacco, dairy products, and oilseeds (including vegetable oil).”<sup>37</sup> In addition, specific licenses could be granted on a case-by-case basis for the export of other “agricultural articles” from the United States that did not fall within the definition just quoted, provided the exportation was “pursuant to an export sales contract” and the deadlines mentioned above met.<sup>38</sup> Because the export embargo exempted some transactions and, notwithstanding its exceptions for agricultural commodities, could theoretically have covered some export sales contracts for agricultural commodities entered into up to 5 days after the President’s announcement, the bill would seemingly have applied.

*Sudan embargo (1997).*—In response to activities of Sudan involving terrorism, destabilization of neighboring governments, and human rights violations, President Clinton used his IEEPA powers

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commodities not exempted by the order, where the contract was entered into up to 5 days after May 21, 1994 (the effective date of the order), the President’s action may not have had an additional impact on exports from the United States given the earlier orders affecting such goods.

<sup>31</sup> Executive Order 12959 of May 5, 1995, § 1(b), 60 Fed. Reg. 24757 (1995). Regarding § 203(b) of IEEPA, see *supra* note 10.

<sup>32</sup> Executive Order 12959, § 1, 60 Fed. Reg. at 24758.

<sup>33</sup> Executive Order 12959, § 8, 60 Fed. Reg. at 24758.

<sup>34</sup> *Id.*

<sup>35</sup> 31 C.F.R. §§ 560.204, 560.210(b)-(c), 60 Fed. Reg. 47063, 47064 (1995).

<sup>36</sup> 31 C.F.R. §§ 560.520(a)-(b), 60 Fed. Reg. at 47070.

<sup>37</sup> 31 C.F.R. §§ 560.520(c), 60 Fed. Reg. at 47070.

<sup>38</sup> 31 C.F.R. §§ 560.520(d), 60 Fed. Reg. at 47070.

on November 3, 1997, to impose trade and financial restrictions on Sudan, including a prohibition on the exportation to Sudan of any goods or technology from the United States or by a U.S. person, or requiring the issuance of a license by a Federal agency, except for donations of articles intended to relieve human suffering, such as food, clothing, and medicine.<sup>39</sup> The order also prohibited U.S. persons from extending credits or loans to the Government of Sudan.<sup>40</sup> The order took effect at midnight November 4, 1997, except that trade transactions under contracts in force as of the effective date could be performed pursuant to their terms through December 4, 1997, and letters of credit and other financing agreements for these trade transactions could be performed pursuant to their terms.<sup>41</sup> Since export sales contracts entered into up to 5 days after the effective date of the President's order would not have been covered by its retroactivity provision, the bill's provision seemingly would have applied.

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<sup>39</sup> Executive Order 13067 of November 3, 1997, § 2(b), 62 Fed. Reg. 59989 (1997).

<sup>40</sup> Executive Order 13067, § 2(e), 62 Fed. Reg. at 59989.

<sup>41</sup> Executive Order 13067, § 7(a), 62 Fed. Reg. at 59990.



## APPENDIX II

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*February 10, 1999.*

Hon. TOM EWING,  
*House of Representatives, Rayburn,*  
*Washington, DC.*

DEAR CONGRESSMAN EWING. The undersigned organizations, representing a broad section of American agriculture, are writing in support of your legislation, H.R. 17, the "Selective Agricultural Embargoes Act of 1999."

H.R. 17 would require congressional review and approval of both Houses of Congress if the President imposes an agricultural embargo on a foreign country. This legislation provides a vital and necessary foreign policy checks and balance system. H.R. 17 does not impede the President's authority to impose cross-sector embargoes. This was the policy of the United States in the late 1980s.

The soybean and grain embargoes of the 1970s and 1980 had a devastating impact on American agriculture, resulting in lost sales, market share and opportunities. Agriculture can not be used as a political tool and foreign policy football. American agriculture and the U.S. government must send a strong message to our many customers and competitors that U.S. farmers and ranchers are consistent and reliable suppliers of agricultural products.

We commend you for your leadership and commitment.

Sincerely,

Agricultural Retailers Association; Alabama Farmers Federation; American Cotton Shippers Association; American Farm Bureau Federation; American Meat Institute; American Soybean Association; Bunge Corporation; Central Soya Co., Inc.; Cerestar USA; Continental Grain; Corn Refiners Association; Farmland Industries, Inc.; Food Distributors International; IMC Global; Independent Bankers Association; Louis Dreyfus Corporation; National Association of Animal Breeders; National Association of State Departments of Agriculture; National Association of Wheat Growers; National Cattlemen's Beef Association; National Chicken Council; National Corn Growers Association; National Council of Farmer Cooperatives; National Farmers Union; National Food Processors Association; National Grain and Feed Association; National Grain Sorghum Producers; National Grain Trade Council; National Grange; National Milk Producers Federation; National Oilseed Processors Association; National Pork Producers Council; National Renderers Association;

National Sunflower Association; North American Export Grain Association; North American Millers' Association; Pet Food Institute; Sunkist Growers; The Fertilizer Institute; United Egg Association; United Egg Producers; U.S. Canola Association.

